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ORIGINAL
FILE

September 2, 1992

Ms. Donna R. Searcy
Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

Re: Equal Access Obligations
for Cellular Carriers
RM-8012

Dear Ms. Searcy:

Enclosed for filing on behalf of PMN, Inc. are an original and four (4) copies of its comments on the referenced Petition for Rulemaking filed by MCI Telecommunications Corporation.

Should there be any questions concerning these comments, please contact the undersigned counsel for PMN.

Sincerely,

John W. Hunter

JWH/se
enc.
cc: Chairman Alfred C. Sikes
Commissioner James H. Quello
Commissioner Sherrie P. Marshall
Commissioner Andrew C. Barrett
Commissioner Ervin S. Duggan

0+4

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Policies and Rules Pertaining	)	RM-8012
the Equal Access Obligations	)	
of Cellular Carriers	)	

COMMENTS
OF PMN, INC.

PMN, Inc., hereby submits its comments in response to the Petition for Rulemaking filed by MCI Telecommunications Corporation ("MCI") requesting that the Commission require all cellular licensees to interconnect with interexchange carriers ("IXCs") through uniform, nationwide cellular equal access policies and procedures.

PMN is the General Partner of Palmetto MobileNet, which, in turn, is a 50% General Partner of the licensee of eight South Carolina RSA cellular systems. The limited partners of Palmetto MobileNet are 18 South Carolina-owned independent local exchange carriers or their affiliates. As such, PMN and these companies would be directly affected by any Commission imposition of equal access requirements upon cellular licensees.

MCI relies on several arguments to justify its request for imposition of equal access provisions on cellular service. First, MCI contends that the growth of cellular service has reached a point that justifies allowing all cellular subscribers to presubscribe to a preferred interexchange carrier. Second, MCI

argues that since the Bell Operating Companies ("BOCs") are required to provide equal access to their cellular customers, all other cellular systems should be required to provide equal access. Third, MCI expresses concern over a purported decline in state regulation of cellular services, particularly those offered by the BOCs, and apparently seeks Commission imposition of equal access requirements to expand the cellular equal access conversion process.

For the reasons set forth below, PMN opposes MCI's petition and urges the Commission not to initiate a rulemaking proceeding that would require all cellular carriers to provide equal access.

Imposition of Equal Access Requirements Upon Cellular Carriers is Not in the Public Interest

Underlying MCI's entire request is an unsupported premise that giving all cellular subscribers a chance to preselect an interexchange carrier on an equal access basis would be in the public interest. Such a contention is not justified on public interest grounds for several reasons.

First, equal access requirements were imposed on the BOCs, initially by the AT&T Consent Decree, on the basis that interexchange carriers could otherwise be prevented from obtaining access to "bottleneck" local exchange facilities. Because mobile services were initially categorized as local exchange as opposed to interexchange service for purposes of determining what services the BOCs could provide under the Consent Decree, the equal access requirements followed the BOC provision of wireline services.

However, the cellular switch is not a "bottleneck." It is not an essential, monopoly facility.

This fact makes MCI's reliance on the growth of cellular as a justification for imposing equal access requirements meaningless. Nevertheless, the comparative figures of landline and cellular subscribership, minutes of use and interexchange traffic show that the size of the cellular market is not a basis for MCI's request. The subscribership of cellular is approximately 5 percent that of local exchange service and cellular minutes of use is about 0.4 percent.[1] Cellular interexchange service is somewhat less than 0.5 percent of landline interexchange service based on minutes of use.[2] Imposing equal access requirements at the level of the cellular switch would serve no useful purpose.

Second, the competitive and economic nature of cellular service makes imposition of equal access requirements unnecessary. When the Commission adopted a regulatory structure for cellular service, competition was a basic tenet of its vision for cellular markets. Two carriers are licensed for each MSA and RSA. Resale of cellular service was specifically permitted. As the Commission's policies have been implemented, there is competition

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[1]U.S. Dep't of Com., 1991 U.S. Indus. Outlook at 29-2; CTIA, Data Survey Through June 1991 (Sept. 9, 1991); Mobile Phone News at 5 (Mar. 30, 1989).

[2]See Aff. of Charles L. Jackson and Richard P. Rozek, Table 4, Attachment B to Motion of BellSouth Corporation for a Waiver of Section II(D) of the Modification of Final Judgment to Allow BellSouth Corporation to Provide Integrated MultiLATA Cellular Service, in U.S. v. Western Electric Co., Civ.A.No. 82-0192, May 9, 1991.

in the provision of cellular services. Customers have a choice of cellular carriers in each market. If one cellular carrier attempts to impose inferior or overpriced long distance service on its customers, these customers can turn to a competitor for service. It should be noted that the Commission did not impose equal access requirements on cellular carriers when it adopted its cellular rules. Likewise, the Commission has never imposed equal access requirements on any other mobile service provider. These are all competitive markets and there is no need to require equal access on the part of the wireless service carrier for such services to remain competitive.

Economic factors provide another assurance of competition in long distance service offerings in connection with cellular service, as so aptly pointed out by the BOCs in their motion to remove mobile services from the interexchange restrictions and equal access requirements of the AT&T Consent Decree.[3] With landline services, the local connection is relatively inexpensive and is provided on an unmeasured basis to many customers, but long distance service is considered a "high-value enhancement." However, with cellular service, the local radio loop holds the greatest value in comparison to long distance and other ancillary services. The way for a cellular carrier to increase its revenue is to foster usage of the local radio loop. Therefore, the

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[3]"Motion of the Bell Companies for Removal of Mobile and Other Wireless Services from the Scope of the Interexchange Restriction and Equal Access Requirement of Section II of the Decree," in U.S. v. Western Electric Co., Civ.A.No. 82-0192, Dec. 13, 1991, at 32-33.

economic relationship between local service and long distance service is fundamentally different in landline and cellular offerings. With cellular service, the BOCs explain, "there is no economic incentive to raise prices, restrict output or otherwise manipulate the market for a comparatively cheap complement when the effect would be to reduce consumption of the comparatively expensive, high-value core services."[4] It follows that cellular carriers will not risk losing basic business by artificially raising long distance prices.

Third, the fact that cellular is a mobile service, not fixed, makes the provision of equal access to cellular customers not only unnecessary, but also more difficult. Switching hardware and software would have to be installed at the Mobile Telephone Switching Office ("MTSO") to enable equal access to be offered to a cellular carrier's own customers. In addition, a substantial amount of the long distance calls made on cellular systems are made by roamers. Even if such roamers were offered the opportunity to select a preferred IXC by their home cellular carrier, information regarding the roamers' chosen IXC would not be readily available to a MTSO serving these customers on a roamer basis. Therefore, a significant number of long distance calls (i.e., those placed by roamers) would not be subject to equal access. If, on the other hand, cellular carriers were required to provide equal access to all customers, including roamers, additional costly and complex technology, including hardware, software and extensive data bases,

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[4] Id. at 33.

would have to be provided and delays in completing long distance calls would necessarily be encountered.

Finally, MCI's public interest arguments in favor of its equal access proposal are nothing more than self-serving justification for a policy that would benefit only it and other IXCs.[5] MCI offers no evidence that customers of non-BOC cellular systems are dissatisfied with the handling of their long distance calls or that they want equal access for their cellular calls. There is no customer demand for MCI's proposal because the cellular subscriber would not benefit. In fact, imposition of equal access requirements would result in unnecessary and unfair costs to the cellular customer. This fact is evident by a comparative description of the means by which BOC and non-BOC cellular carriers handle long distance traffic.

On a BOC system, the carrier is required to hand a cellular customer's long distance calls to that customer's presubscribed interexchange carrier. The customer is billed at the IXC's retail rate for the long distance calls and at the BOC cellular carrier's rate for the cellular airtime. The non-BOC cellular carrier typically routes its customer's long distance calls from the MTSO over a bulk priced IXC facility interconnected at the MTSO. The cellular customer in this situation is billed by the cellular carrier for his cellular airtime and a charge for the long distance

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[5] Throughout consideration of this issue, the Commission should not lose sight of the fact that, rather than marketing their long distance services to the individual cellular subscribers, the IXCs already competitively market to the non-BOC cellular carriers on a bulk discount basis.

portion of the call. The long distance charges are based on bulk discount rates obtained by the cellular carrier plus some mark-up. Cost savings do exist on the non-BOCs' systems. The non-BOC cellular carrier can reflect some of these long distance cost savings in its rates.

If the Commission were to impose equal access requirements on all carriers, the cost of cellular service would increase. Imposition of equal access on all cellular carriers would be of benefit only to MCI and other IXCs because they would receive underlying retail rates for all long distance calls, as opposed to bulk rates they now receive from non-BOC cellular carriers. Imposition of equal access obligations on the BOCs for cellular service by the U.S. District Court does not justify the same action by the Commission for all cellular carriers. PMN suggests that there are good public interest reasons for the Commission not to take such action.[6]

Implementation of Equal Access Requirements is Impractical and too Costly for the Benefits to be Procured

In addition to the public interest reasons for not adopting MCI's petition, the Commission should consider a number of practical arguments against implementing equal access for cellular service.

Cellular service areas do not necessarily conform to LATA boundaries. MCI does not address the issue of how the

[6]It should be noted that the BOCs' request for removal of such requirements for cellular services is being considered by the Department of Justice. See fn. 3, supra.

determination would be made under equal access for the turnover of a call to an IXC. Yet, if the Commission were to adopt MCI's proposal, it would have to establish criteria for determining when a non-BOC cellular carrier would handle a call and when it would have to hand off a call to an IXC. Further complicating the situation is the Consent Decree imposition of LATA boundaries as the basis for BOC equal access requirements for both landline and cellular services. Imposition of equal access at the LATA or local exchange level would clearly inhibit the Commission's policies of encouraging regional cellular service. However, because the LATA restrictions on the BOC cellular systems were imposed by the Consent Decree, the Commission cannot unilaterally alter these restrictions. Yet, to impose LATA boundaries as the hand-off point for calls on all cellular systems would create enormous problems. This issue is not only one whose resolution would cause frustration and confusion, but one whose implementation would result in increased regulation and imposition of carrier requirements and possibly discourage the development of regional cellular systems.

If an equal access structure is imposed, significant costs would be incurred by the non-BOC carriers. MCI does not address how those costs would be recovered. The cellular carrier would initially bear such costs, but should be able to pass along the cost of providing cellular customers equal access capability and the cost for IXC access to the cellular carrier's network to originate and terminate calls. The adverse effects of such costs on developing rural cellular systems would be especially

pronounced. The smaller system licensees are making the investments that are necessary to deploy cellular service in their areas. It is essential that these investments continue to be made in order that the Commission's goal of expansive cellular service is met. Subscribers would see dramatically higher rates reflecting increased access costs and would likely react adversely, thereby depriving the cellular operator of necessary growth and revenue.

The problem of cost recovery for equal access in higher cost rural local exchange areas has been eased by the work of the National Exchange Carrier Association ("NECA"). NECA performs functions through its pooling process that averages access costs, thereby allowing high cost rural companies to keep rates down through contributions from other pool participants and through the Universal Service Fund. NECA also provides administrative and support services that ease the regulatory hurdles on the participating local exchange companies. Without some averaging system for cellular carriers, the access rates would be very high for rural systems. However, due to the competitive nature of cellular systems, it is questionable whether a system such as NECA would be feasible. Even if a NECA-type arrangement could be established, such costs should not be incurred in the first place, for they would have an adverse impact on the growth in subscribership of an elastic service such as cellular.

Also, if an IXC obtains interconnection with one cellular system, questions are raised regarding whether the IXC would offer long distance service on the other cellular system or to the

resellers serving the same MSA or RSA, what rates the IXC would charge and whether its rates would be the same for all subscribers. Issues such as these indicate that the Commission would have to consider the need to regulate the provision of long distance service to cellular subscribers because of the competitive nature of this wireless service. Such administrative burdens and expenses would needlessly be incurred only to foster increased regulation rather than greater competition.

Conclusion

PMN believes that the MCI request is misdirected and that no valid arguments have been made that justify Commission imposition of equal access requirements on cellular carriers. Furthermore, the Commission should not be influenced by the fact that the AT&T Consent Decree imposed equal access requirements on the BOCs' cellular offerings. PMN therefore urges the Commission not to initiate the proceeding requested by MCI, but rather to deny its petition for rulemaking.

Respectfully submitted,

PMN, INC.

By: 
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Its Attorneys

September 2, 1992

CERTIFICATE OF SERVICE

I, Shannon G. Eubanks, hereby certify that a copy of the foregoing Comments of PMN, Inc., was mailed first-class United States mail, postage prepaid, this second day of September, 1992 to all parties listed below.

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